

**BEFORE THE
CASE REVIEW PANEL**

In the Matter of W.D.W.,)	
Petitioner)	
And)	CAUSE NO. 050506-39
The Indiana High School Athletic Assoc., Inc.,)	
Respondent)	
)	
Review Conducted Pursuant to)	Hearing Closed to the Public
I.C. § 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

W.D.W. (hereafter, “Petitioner”) is presently a 19-year-old senior enrolled in Gary Roosevelt High School in the Gary Community School Corporation (hereafter, “Gary”). His date of birth is May 29, 1985. He has been on the Gary Roosevelt track team since his freshman year. Last year he participated in the IHSAA Track and Field Tournament Series at the Sectional, Regional and State levels. Petitioner will turn 20 years of age on May 29, 2005. The state championship in track is on June 3 and 4, 2005. Under the Respondent’s **Rule C-4-1**, also known as the “Age Rule,”

A student who is or shall be twenty (20) years of age prior to or on the scheduled date of the IHSAA state finals in a sport shall be ineligible for interschool athletic competition in that sport; a student who is nineteen (19) years of age on the scheduled date of the IHSAA state finals in a sport shall be eligible as to age for interschool athletic competition in that sport.¹

Petitioner acknowledges his age and the fact that he will be twenty years of age prior to the scheduled date for the state finals in track. Strict application of Rule **C-4-1** would render him ineligible. Petitioner believes that his circumstances should be considered and Respondent’s

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-4-1** is “common” to both genders. (All references are to the 2004-2005 by-laws of Respondent.)

“Hardship Rule” should be applied.² However, Respondent’s By-Laws prohibit the application of the “Hardship Rule” to the “Age Rule.” See Rule **C-17-8.1**.

On March 17, 2005, Petitioner, through his track coach, requested a determination of his athletic eligibility for the 2005 track season. The Respondent, by its Commissioner, issued a letter, dated March 29, 2005, determining that, pursuant to the IHSAA Age Rule, Rule C-4-1, Petitioner’s request for a waiver that would allow him to have athletic eligibility in the spring of 2005 as a twenty year old is denied. Petitioner, through his track coach, requested a review of the Commissioner’s decision by Respondent’s Review Committee. This request was made on April 8, 2005. The Respondent’s Review Committee conducted its review on May 2, 2005, and issued its decision on May 6, 2005, upholding the Commissioner’s decision declaring Petitioner ineligible to participate in the 2005 track season.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, by counsel, appealed to the Indiana Case Review Panel³ on May 6, 2005. The parties were notified that date of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. The Student notified the CRP on March 8, 2005, that he wished for the proceedings in this matter to be closed to the public. Hearing was set for May 12, 2005, at Room 233, State House, 200 West Washington Street, Indianapolis, Indiana. The parties received timely notice of the proceedings.

² Rule **C-17-8** is the IHSAA’s “Hardship Rule.” Generally, the “Hardship Rule” allows the IHSAA “to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” **Rule C-17-8.1**.

Respondent, on its own initiative, can invoke the “Hardship Rule,” but a member school cannot. **Rule C-17-8.2**. However, Respondent will not apply the “Hardship Rule” to several eligibility by-laws, including Rule **C-4-1**, the “Age Rule.” See **Rule C-17-8.1**.

³ The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-5-63-7(c)(3).

On May 12, 2005, the CRP convened.⁴ The Petitioner appeared and was represented by counsel. The Respondent appeared by counsel and its Commissioner. Prior to the hearing, a pre-hearing conference was conducted for the purpose of receiving additional documents and entertaining objections. During the pre-hearing, Petitioner submitted four (4) additional documents, which were marked P-1 through P-4. P-1 is a History and Physical report of the Student by Methodist Hospitals, Inc., dated 8-1-1996, consisting of three pages. Respondent made the following objections to P-1: Respondent claimed it was hearsay, and not a complete report from Methodist Hospitals, Inc. P-2 is a letter to the Case Review Panel from John R. Campbell, Athletic Director, Roosevelt High School, Gary Community School Corporation. No objection was made to P-2. P-3 is a computer printout of Indiana Child Welfare Information regarding the Student from 6-13-1990 to 3-6-2002. Respondent made the following objections to P-3: Respondent claimed it was hearsay and ambiguous. P-4 is a computer printout of Indiana Child Welfare Information regarding the Student from 6-14-1990 through 3-6-2002. Respondent made the following objections to P-4: Respondent claimed it was hearsay, and was vague and ambiguous. The Chair noted the objections that the documents were hearsay but admitted them into the record with that limitation. During the course of the hearing, Respondent presented its demonstrative evidence in the form of a chart of W.D.W.'s Academic Time Line. Copies of this chart were distributed to the members of the CRP at the May 12, hearing. Respondent relied upon this chart to elicit testimony from W.D.W. Respondent tendered no additional documents.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is 19 years old (d/o/b May 29, 1985). It is not clear how long Petitioner lived with his natural parents. According to Petitioner's letter to the Respondent's Committee, he lived with his parents until he was six years old, and then went to live with his Aunt in Gary as well as his Aunt in Minnesota. He has lived with his Aunt in Gary for the past ten years.
2. It is unclear from the records when Petitioner actually started 1st grade. According to Petitioner's letter to the Respondent's Committee, and also the letter sent by his high school track coach, he started school at age six, which would have been the fall of 1991. The Gary school records show that he first enrolled at Gary's Jefferson Elementary School in the fall of 1992, which would have made him seven years old. It appears that Petitioner was enrolled at Jefferson for the 1992-1993 school year, and then he withdrew.
3. The Gary school records show Petitioner was not re-enrolled in the Gary system for over a year, not until 11/1994. According to Petitioner, he lived with his Aunt in Minnesota for about a year and a half, and this would most likely have been the 1993-1994 school year,

⁴Six members were present: John L. Earnest, Chair; Terry Thompson; Scott F. Eales; James Perkins; Brad Tucker; and Denise Gilliland.

presumably 2nd grade, and then the first part of the 1994-1995 school year, presumably the first part of 3rd grade.

4. Petitioner is currently enrolled in Gary Roosevelt High School and has attended this high school since he was a freshman during the 2001-2002 school year. Petitioner plans to graduate after summer school 2005.
5. Petitioner was advised that he is athletically ineligible to participate on Gary Roosevelt track and field team because he is too old under the Respondent's Age Rule. Petitioner was advised by Respondent's Commissioner that his request for a waiver that would allow the Student to have athletic eligibility in the spring of 2005 as a twenty year old would be denied.⁵
6. The State Track Meet is scheduled to occur on June 3, 2005.
7. Petitioner is in General Education Classes. His GPA has improved to 1.9390. Petitioner has yet to satisfy the Graduation Qualifying Examination.⁶ He is planning on attending summer school in the summer of 2005 to complete a Government class.
8. His future plans involve attending a post-secondary school.

CONCLUSIONS OF LAW

9. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered "state action," and for this purpose, makes the IHSAA analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. § 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student eligibility adverse to the Petitioner. The Petitioner invoked his statutory right to review. The Case Review Panel has jurisdiction to review and determine this matter.
10. Under the Administrative Orders and Procedures Act (AOPA), I.C. § 4-21.5-3-27(d), findings by the CRP must be based upon evidence considered substantial and reliable. This requires the CRP to evaluate documentary and testimonial evidence presented to it.

⁵Letter to Rhonda Anderson, Boys' Track and Field Coach, Gary Roosevelt High School from Blake Ress, Commission, IHSAA, dated March 29, 2005.

⁶I.C. 20-10.1-16-13.

11. Respondent's "Age Rule" is, *per se*, a legitimate rule that promotes important facets of athletic competition, such as the health and safety of student-athletes based upon physiological considerations resulting from maturation during the high school years. The "Age Rule" is also designed to encourage competitive equality among member schools and promote availability of opportunities for competing as a member of a team. As with any age-specific regulation, some line-drawing must occur. Respondent has established a rule regarding age that can be readily ascertained. Petitioner was advised of the "Age Rule" and was aware that he would likely be ineligible to participate in track and field in the spring of 2005.
12. There is no dispute that Petitioner does not satisfy the "Age Rule" requirement of **Rule C-4-1**. Rather, Petitioner argues that the rule should be waived utilizing Respondent's "Hardship Rule." Under this rule, the Respondent can waive the effect of any eligibility rule where strict enforcement of the rule in a particular case would not serve to accomplish the purpose of the rule; the spirit of the rule would not be violated; and there exists in a particular case circumstances showing an undue hardship would result from enforcement of the rule. However, Respondent will not apply its "Hardship Rule" to certain eligibility rules, including the "Age Rule." See **C-17-8.1**. Respondent has developed what it characterizes as a "uniform, bright line rule" in this regard, which limits Respondent and its member schools. Respondent may limit itself by its own rules, but Respondent cannot limit the CRP in this fashion. A *per se* legitimate rule such as the "Age Rule" may, when applied to a specific student, work a hardship. Each case will require its own analysis. Petitioner was entitled by statute to seek a hearing before the CRP, a right secured by the General Assembly without the exception Respondent argues. Any exceptions to the right of a parent to seek recourse to the CRP would have to be dictated by the General Assembly.
13. Petitioner has no professional prospects or post-secondary scholarship offers that are jeopardized by his ineligibility. Petitioner's more immediate goals include satisfying graduation requirements, earning a high school diploma, and furthering his education—and employment prospects—through post-secondary education. Petitioner is one of the better members on the team, and if he were eligible, he would likely displace a younger student on the team. The restriction imposed on Petitioner by virtue of his age is not the result of any exceptional circumstance that would warrant a waiver of the "Age Rule" under an "as applied" analysis.

ORDER

In consideration of the foregoing, the Case Review Panel, by a vote of 5-1, sustains the determination of the Respondent that Petitioner is ineligible for interscholastic athletic competition sanctioned by Respondent by reason of his age.

DATE: May 26, 2005

/s/ John L. Earnest, Chair

Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. § 4-21.5-5-5.